

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NIKKI POOSHS,

Case No. C04-01221 PJH (JCS)

Plaintiff(s),

v.

**DISCOVERY ORDER RE: JOINT
LETTER [Docket No. 177]**

ALTRIA GROUP, INC.,

Defendant(s).

On March 5, 2012, the parties filed a Joint Letter concerning several discovery issues in dispute. Dkt. 177. On March 16, 2012, a hearing was held.

For reasons stated on the record, and good cause shown,

IT IS HEREBY ORDERED THAT:

1. Defendants do not have to pay for Plaintiff's expert witnesses' time spent preparing for deposition. However, Defendants do have to pay for Plaintiff's expert witnesses' time spent traveling to and from the deposition, and time in the deposition. This rule shall apply to all expert witness depositions.

2. The parties disagree about whether Judge Hamilton's discovery orders forbid supplemental expert opinions under Federal Rule of Civil Procedure 26(e). The parties are ordered to do the following, without prejudice to arguing before Judge Hamilton that facts and opinions contained in any supplemental reports should be excluded at trial: **Not less than 10 days before a deposition**, the party whose expert is being deposed must disclose in a supplemental expert report, any and all opinions reached since the first expert report as of the date of the supplemental report, and the factual basis for those opinions, and any new factual bases for previously reported opinions learned as of the date of the supplemental report.

3. Regarding non-retained experts disclosed by Plaintiff as experts in this case, by **March 30**, Plaintiff must disclose the facts and opinions to which the non-retained expert is expected to testify, in accordance with Federal Rule of Civil Procedure 26(a)(2)(C).

1 4. Regarding experts retained in another case that Plaintiff has disclosed as experts in this
2 case, by **March 30**, Plaintiff must comply with the expert disclosure rules as if the experts were
3 retained in this case. Such disclosures are without prejudice to arguing before Judge Hamilton that
4 such expert testimony is inadmissible at trial.

5 5. Plaintiff's Rule 30(b)(6) deposition notices are over broad and require the production of a
6 witness on virtually every fact and document that might be relevant in this case. Therefore, by
7 **March 23**, the parties shall reach a stipulation that previous corporate depositions of Defendants in
8 other similar actions can be used as if taken in this action. By **March 30**, Plaintiff must narrow Rule
9 30(b)(6) topics, eliminating those topics that were covered in their previous depositions in other
10 cases and narrowing the remaining topics. At the same time, Plaintiff shall provide documents for
11 each topic on which Plaintiff will examine each 30(b)(6) witness. The parties shall also meet and
12 confer by **March 30** to schedule Rule 30(b)(6) depositions.

13 6. Hill & Knowlton is not excused from providing a Rule 30(b)(6) witness.

14 IT IS SO ORDERED.

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16 Dated: March 21, 2012

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20 JOSEPH C. SPERO
21 United States Magistrate Judge
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